Hovsepian v. Apple, Inc. Doc. 337 Att. 1

Exhibit B

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE:) C-05-01114-JW
ACACIA MEDIA)
TECHNOLOGIES) SEPTEMBER 8, 2006
CORPORATION.)
) PAGES 1-211
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THE PROCEEDINGS WERE HELD BEFORE

THE HONORABLE UNITED STATES DISTRICT

JUDGE JAMES WARE

A P P E A R A N C E S:

FOR THE PLAINTIFFS: HENNIGAN, BENNETT & DORMAN
BY: RODERICK G. DORMAN
ALAN P. BLOCK
865 SOUTH FIGUEROA STREET
SUITE 2900
LOS ANGELES, CALIFORNIA 90017

FOR THE DEFENDANTS: KEKER & VAN NEST
BY: DARALYN J. DURIE
DAVID J. SILBERT
710 SANSOME STREET
SAN FRANCISCO, CALIFORNIA
94111

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

A P P E A R A N C E S:(CONT'D)

THE COURT: ALL RIGHT. BUT IT COULD BE A PHYSICAL OBJECT. IT'S NOT LIMITED TO BUT IT COULD BE.

MR. BLOCK: RIGHT.

THE COURT: SO IF IT IS A PHYSICAL OBJECT, AT THAT POINT I CANNOT INPUT IT INTO THE ANALOG OR DIGITAL CONVERTERS.

MR. BLOCK: BUT THE CLAIM DOESN'T DISTINGUISH BETWEEN PHYSICAL.

THE COURT: YOU STARTED YOUR ANSWER WITH A "BUT." BUT IS THAT CORRECT?

MR. BLOCK: YES.

THE COURT: ALL RIGHT. SO AT LEAST IF I DEFINE THE "ITEM CONTAINING INFORMATION" AS HAVING THIS PHYSICALITY WHICH I KNOW WE'RE ARGUING ABOUT BUT I HAVE TO COME BACK TO, I CAN'T DO IT AT STEPS 124, 127. I HAVE TO DO BACKWARDS.

MR. BLOCK: BUT YOU HAVE THE CHOICE OF TWO STILL.

THE COURT: YES. SO IS THAT THE DISPUTE TO LIMIT IT TO 111, OR 112, OR BOTH?

MR. BLOCK: WELL, MR. BENYACAR WANTS TO LIMIT YOU TO 111 ONLY AND I'M SAYING DON'T PUT A LIMITATION IN BECAUSE IT CAN BE ANY ONE OF THESE THREE THINGS.

THE COURT: OKAY. AND THIS GOES BACK TO YESTERDAY AND I WAS TRYING TO REMIND MYSELF HOW I WAS THINKING ABOUT IT YESTERDAY BUT WE HAD A DEBATE

YESTERDAY BECAUSE IT'S THE SAME SPECIFICATION AS TO WHETHER OR NOT THE IDENTIFICATION ENCODER OR THAT PROCESS CAN RECEIVE THE ITEM CONTAINING INFORMATION AND OPERATE ON IT OR MUST THAT, MUST THAT TAKE PLACE SOMEPLACE ELSE?

AND YOUR POSITION IS THAT THE IDENTIFICATION ENCODING PROCESS OR THE IDENTIFICATION ENCODER, HOWEVER YOU CALL IT, IS CAPABLE OF, OF RECEIVING THE ITEM CONTAINING INFORMATION AND TO EXTRACTING FROM THAT ITEM CONTAINING INFORMATION THE INFORMATION.

MR. BLOCK: YES, BUT THERE ARE OTHER EXAMPLES IN HERE OF CONVERTERS THAT DO THAT AS WELL LIKE THE TELECINE THAT ARE NOT NECESSARILY PART OF THE IDENTIFICATION ENCODER.

THE COURT: YEAH, I'M NOT LIMITING MYSELF TO THAT. I KNOW ABOUT THAT DEBATE. SO DO I NEED TO WORRY ABOUT HOW THAT IS DONE, HOW THE INPUTTING IS DONE?

MR. BLOCK: I DON'T BELIEVE SO, IT'S INPUTTING. IT'S THE TERM OF ORDINARY MEANING OF PROVIDING, PROVIDING INFORMATION. IT'S A STEP, A

METHOD STEP.

THE COURT: BUT SOMEHOW THE INPUTTING SUGGESTS TO ME THAT I NEED TO DEFINE THE, THE, THE RECIPIENT AS CAPABLE OF RECEIVING IT.

MR. BLOCK: AND THE CLAIM ALREADY DOES

THAT, IT SAYS IN THE TRANSMISSION SYSTEM.

THE COURT: NOW, AS TO THE SOURCE MATERIAL LIBRARY, I GUESS THE POINT THAT WAS BEING MADE TO ME WAS THAT THERE WAS NOTHING ABOUT THE DESCRIPTION OF THAT THAT DEFINES IT AS, AS CAPABLE OF HAVING INPUTS AND YOU'RE SAYING IT'S INHERENT IN THE DEFINITION OF A SOURCE MATERIAL.

MR. BENYACAR: WHAT I PUT UP, BECAUSE I WAS SURPRISED TO HEAR MR. BLOCK SAY WHAT HE HAD TO SAY BECAUSE I WAS SURPRISED TO HEAR WHAT MR. BLOCK HAD TO SAY ABOUT TRANSFORMED INTO A TRANSMISSION SYSTEM.

THIS IS PARAGRAPH 16 OF THE STIPULATION BETWEEN THE PARTIES. YOU SEE THE -- THIS STEP A IS THE INPUTTING AN ITEM HAVING INFORMATION INTO THE TRANSMISSION SYSTEM.

AND THE STIPULATION SAYS THAT THE PARTIES AGREE THAT THE TRANSMISSION SYSTEM IS LOCATED AT THE CENTRAL PROCESSING LOCATION AND THAT THE FORMATTING STEPS, INCLUDING STEPS A THROUGH D

LISTED ABOVE, ARE PERFORMED BY THE TRANSMISSION SYSTEM.

NOW, THEY DID IT BECAUSE THEY HAD, THEY HAD POTENTIAL INDEFINITENESS ARGUMENTS PROBLEMS IF THEY DIDN'T SO THAT'S WHAT STIMULATED THIS BUT THEY CANNOT WALK AWAY FROM THE STIPULATION. THE STEP HAS TO BE PERFORMED BY THE TRANSMISSION SYSTEM.

A SOURCE -- WE HAVE THE SAME STIPULATION

ON CLAIM 14.

THE, THE -- SO WHAT COMPONENT OF A TRANSMISSION SYSTEM CAN DO IT? AND I WOULD OFFER THE SOURCE MATERIAL LIBRARY IS THE ONLY COMPONENT THAT CAN DO IT.

THE COURT ASKED ABOUT THE IDENTIFICATION ENCODER AND THE ONLY POINT I WANT TO MAKE ABOUT THIS IS, IS THE IDENTIFICATION ENCODER CAN ONLY ACCEPT A PHYSICAL OBJECT FROM THE SOURCE MATERIAL LIBRARY WHEN, WHEN THE, WHICH MEANS THAT THE, THAT THE PHYSICAL OBJECT IS ALREADY IN THE TRANSMISSION SYSTEM AT THE TIME THAT THE IDENTIFICATION ENCODER GETS IT.

THIS CALLS FOR INPUTTING ITEMS HAVING INFORMATION INTO THE TRANSMISSION SYSTEM.

WHEN THE IDENTIFICATION ENCODER GETS IT FROM THE SOURCE MATERIAL LIBRARY BY THE TRANSFER,

IT WAS ALREADY IN THE TRANSMISSION SYSTEM BECAUSE THE SOURCE MATERIAL LIBRARY IS PART OF THE TRANSMISSION SYSTEM.

SO THE ONLY PLACE WHERE THE INPUTTING INTO THE TRANSMISSION SYSTEM COULD HAVE OCCURRED IS AT THE SOURCE MATERIAL LIBRARY.

THE COURT: IF YOUR ARGUMENT IS CORRECT, WHY DO YOU ALLOW FOR ANY INPUT INTO THE SOURCE MATERIAL LIBRARY? BECAUSE IF YOU ALLOW FOR AN INPUT THERE, WITH NO INPUTS SHOWN, THEN YOU MUST

ALLOW FOR AN INPUT ANY PLACE ELSE WITHOUT AN INPUT BEING SHOWN.

MR. BENYACAR: WELL, THE COURT IS CORRECT IN THAT WHEN I TRIED TO START MY ARGUMENT I SAID WE'RE AT A DISADVANTAGE BECAUSE THIS STEP IS NOT DESCRIBED AT ALL.

SO WRITTEN DESCRIPTION ISSUES ASIDE, WE'RE STARTING WITH NO, WITH NO, WITH NO WRITTEN DESCRIPTION TO USE AS A BASIS.

SO THE ONLY WRITTEN DESCRIPTION THAT I CAN USE AS A BASIS IS THAT SINCE THESE PHYSICAL OBJECTS ALWAYS START IN THE SOURCE MATERIAL LIBRARY, NONE OF THESE OTHER COMPONENTS ACCEPT PHYSICAL OBJECTS OR PROCESS PHYSICAL OBJECTS AND THE IDENTIFICATION ENCODER IS ONLY DESCRIBED AS

RECEIVING THE, THE IDENTIFICATION ENCODER -- LET ME START AGAIN.

NONE OF THE COMPONENTS AFTER THE IDENTIFICATION ENCODER PROCESS PHYSICAL OBJECTS, ITEMS CONTAINING INFORMATION. IT'S ONLY INFORMATION FROM HERE ON END. AND THAT ONLY LEAVES YOU WITH TWO SOURCE MATERIAL LIBRARY AND IDENTIFICATION ENCODER. THE IDENTIFICATION ENCODER IS DESCRIBED AS RECEIVING THE PHYSICAL OBJECTS FROM THE SOURCE MATERIAL LIBRARY.

WHAT DOES THAT MEAN? THAT MEANS THAT THE PHYSICAL OBJECTS WERE ALREADY IN THE TRANSMISSION SYSTEM WHEN THE IDENTIFICATION ENCODER GOT IT.